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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,657

Applicant(s)

JACKSON ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,7,13,16-18,23 and 48-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,7,13,16-18,23 and 48-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not support “an average gripping structure density” as recited in claim 55.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3 – 4, 6 – 7, 13, 16 – 18, 23 and 48 – 57 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an adhesive backed label being detachably connected to a release liner, does not reasonably provide enablement for a second surface of a three-dimensional tape being detachably connected to an adhesive backed label. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

The applicant has amended claim 1 to recite that the second surface of the three dimensional tape is detachably connected to an adhesive backed label and refers to pages 9 and 10 of the specification to provide support for this amendment. However,

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the instant application recites that tape may be supplied as an adhesive backed label on a release liner that may be discarded after use.

With respect to claim 55, the applicant has claimed an average gripping structure density. The specification, while being enabling for a raised structure density, does not reasonably provide enablement for an average gripping structure density. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

Claims 1, 3 – 4, 6 – 7, 13, 16 – 18, 23 and 48 – 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claim 1, the applicant states that the three dimensional tape is detachably connected to an adhesive backed label. If the second surface is detached from the adhesive backed label, then it is unclear how the tape will adhere to the barrel. Is the adhesive backed label considered the pre – applied adhesive or is there a pre – applied adhesive and a separate adhesive backed layer. Clarification and/or correction are required.

For examination purposes, the examiner interprets the claim language in light of the specification, which describes the finger grip tape as the adhesive backed label that is detachably connected to a release liner (page 9, line 34 to page 10, line 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 – 4, 6 – 7, 13, 23, 48 – 54 and 56 – 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US 3,575,169) and further in view of Reeves et al. (US 5,491,015).

With reference to claim 1, Voss discloses an applicator barrel having an outer surface and a three-dimensional tape connectable to a portion of an outer surface, the tape including a first surface and a second surface opposite the first surface, the first surface having formed thereon at least one integrally formed gripping structure, and a second surface as set forth in figures 2 – 7.

The difference between Voss and claim 1 is the provision that the three dimensional tape is detachably connected to an adhesive backed label (release liner as supported by page 9, line 34 to page 10, line 3 of the specification).

Reeves et al. (hereinafter "Reeves") discloses a three-dimensional tape connectable to a portion of an outer surface, the tape including a first surface and a second surface opposite the first surface (figure 1), the first surface having formed thereon at least one integrally formed gripping structure (22), and the second surface being detachably connected to an adhesive backed label (release liner as supported by

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page 9, line 34 to page 10, line 3 of the specification) as set forth in col. 5, lines 38 – 42 and in figure 1.

It would have been obvious to one of ordinary skill in the art to provide the three dimensional tape of Reeves in combination with the applicator barrel of Voss because Voss teaches the use of a three dimensional tape in use with an applicator barrel and the substitution of one three dimensional tape for another includes only a level of ordinary skill in the art.

Likewise, the three dimensional tape of Reeves is suitable for any article adapted for interaction with hands or feet (col. 2, lines 62 – 63) and exhibits more uniform and more consistent slip control properties (col. 3, lines 1 – 3). Further, the use of release liners with adhesive backed layers is well known in the art to allow for sterility of the structure prior to use.

With reference to claim 3, Voss teaches at least one gripping structure extending inwardly from the first surface as set forth in figure 5.

As to claim 4, Voss discloses a plurality of gripping structures in figures 2 – 7.

With respect to claims 6 and 7, the examiner considers the protrusions (22) alone of Reeves to form the diamond pattern, and the protrusions along with the underlying portion of the layer (12) to form the box-diamond combination pattern as claimed.

With respect to claims 13 and 23, Voss does not specifically disclose that the tape is formed of polypropylene (or those of claim 23) even though Voss does disclose that the tape is formed from plastic materials. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plastic tape of

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Voss from polypropylene (or those of claim 23) because polypropylene (and those of claim 23) is widely used plastic material that is used to form tampon applicators (and related components). The choice of what specific plastic material is used to make the tape from will not materially affect how the tape operates or functions so based on the fact that Voss discloses that the tape can be plastic, reciting that the tape is made from polypropylene is not sufficient to patentably distinguish from Voss.

With reference to claims 48 – 50, 54 and 57, see the figures of Voss.

As to claims 51 – 53, the examiner contends that the claimed limitations are obvious matters of design choice that do not patentably distinguish the claimed invention from the prior art.

As to claim 56, the examiner considers the claimed limitation to be inherent in Voss. This is because the finger gripping structure is being provided for the reason that the outer tube can be slippery. The finger grip will then assist in gripping. The coefficient of friction for the coated layer of the barrel will inherently be less than the coefficient of friction for the gripping structure.

Claims 16 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US 3,575,169) in view of Reeves et al. (US 5,491,015), and further in view of Voss (US 3,347,234).

With respect to claims 16 and 18, Voss ('169) in view of Reeves ('015) does not disclose that the applicator barrel is paper based or plastic. Voss ('234) discloses a tampon applicator that has a gripping structure. Voss ('234) discloses in col. 5, line 62

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to the end of col. 5, that the applicator barrel can be made from paper based or plastic materials (as is extremely well known in the art).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the applicator barrel from paper or plastic due to their ease of manufacturing and their easy availability. Paper and plastic based applicators are extremely well known and old in the art and the use of paper or plastic for the barrel material is very obvious to one of ordinary skill in the art.

As to claim 17, Voss ('234) discloses a plastic coating for the paper based blank.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
January 9, 2004


GLENN K. DAWSON
PRIMARY EXAMINER